

**BOUGHTON MONCHELSEA, SAINT PETER**

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**JUDGMENT**

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Introduction

1. The Petitioners, Anthony Avard and Margaret Grieg seek a confirmatory Faculty in respect of the following matters:

“The making permanent of two areas of temporary reordering at the east end of the nave and the east end of the south aisle, the introduction of a grand piano, the removal of pews at the west end of the north aisle to allow for the introduction of a timber carving of the nativity by Graham Clarke and the making permanent of an audio visual installation. All in accordance with a Summary of Works dated May 2014 with supporting papers, a Statement of Significance and a letter to the DAC dated May 2014 with supporting papers.”

2. The Petitioners have not been able to find the necessary documents to evidence a belief that at least parts of the works were initially undertaken on a temporary basis under an Archdeacon’s licence. The current and former Archdeacon have also been unable to trace any such records. I therefore conclude, on balance, that the works do not have a lawful origin. In saying that, I must clarify that no criticism is to be levelled at the Petitioners personally, since they clearly ‘inherited’ these works.
3. Having said that, as the Petitioners realise, undertaking works without authorisation is a serious matter and particularly so in the case of this very fine Grade 2\* listed building.

4. After these works came to light, the Archdeacon of Maidstone worked with the Petitioners to ensure that the facts were placed before the Court. I am grateful to all of them for their efforts. The paperwork has not been forthcoming but it is believed that the pews were removed and audio visual screens inserted under an Archdeacon's temporary licence in 2009. In the absence of adequate documentation I shall simply note that the current status of all the works and changes is certainly unlawful but that they appear to have been undertaken several years ago without provoking any objection. I also note that the PCC are now seeking to regularise matters, which means that I do not have to consider the use of restoration orders.
5. The pews which were removed have been stored in a neighbouring barn. I visited the church at the beginning of July to view the works and I saw the pews, indeed stored in a neighbour's barn on that occasion.
6. Following consultation with partner heritage bodies, the DAC decided to recommend the works and changes for approval, subject to a standard condition to ensure the adequacy of the wiring in the audio visual installation.<sup>1</sup> The DAC also certified that, in its opinion, the works do not affect the character of the church as a building of special architectural or historic interest. English Heritage (now Historic England ["HE"]) did not object to any of the elements in question though they consider the audio visual screens to be *"at present, visually intrusive. Their visual dominance introduces an unsympathetic and highly reflective modern material to the interior of the church which, we feel, competes with the central focus of the church."* They continued, however:

*"We understand that they are a valued resource to the congregation and we therefore recommend that an alternative position and method of fixing could be sought."*

HE do not object to the removal of pews which has occurred and positively support the creation of a dedicated area for the *"delightful"* wooden nativity scene currently stored at the west end of the nave. They recommend staining the wooden former pew platform in the south eastern aisle where the piano is stored. The Society for the Preservation of Ancient Buildings, whilst regretting the fact that they had not been given the opportunity for design input and making similar points to HE about fixings, do not go so far as to object.

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<sup>1</sup> The 'proviso' on the Notification of Advice refers to a 'lighting installation' but a suggested lighting proposal is now to be the subject of a separate (prospective) faculty petition and I assume that the intention was to refer to the audio visual display installations.

7. The listing description for the church is as follows:

“Parish church. Possibly with late C11 or C12 core, C13, C14, C15. Repaired 1832 after fire. Nave, aisles, porches and south transept rebuilt 1874-5 by Habershon. Ragstone rubble to chancel and lower section of tower. Upper section of tower built with larger blocks of roughly-coursed ragstone. Roughly-coursed stone to north aisle. Snecked stone to nave, south aisle, south transept and porches. Plain tile roof to chancel and south transept, slate roof to rest. Nave, south aisle, south porch, crossing tower, south transept, chancel and north aisle which extends across north face of tower. West gable end: Hollow-chamfered plinth. Moulded string below nave window. West end of north and south aisles battlemented above moulded string, string and battlements returning. Diagonal buttresses to aisles, and pilaster buttresses to nave, rising to crocketed pinnacles. Coped gable to nave. C19 five-light window to nave, & to south aisle. Restored C15 two-light window with ogee-headed lights and squared head and hoodmould to north aisle. South porch: hollow-chamfered plinth. Diagonal buttresses. Moulded string below plain parapet, rising to gable over doorway. Re-set C15 pointed-arched south doorway in shafted square-headed cavetto-moulded architrave with trefoiled spandrels and squared hoodmould. C19 pointed-arched inner doorway. Sundial over outer doorway removed from south side of tower in 1874-5. South aisle: hollow-chamfered plinth, moulded string and battlements. 2 buttresses alternating with three C19 three-light traceried windows. South transept: projects south of south aisle. Diagonal buttresses. Hollow-chamfered plinth and string. Plain stone coped parapet rising to south gable. Tall C19 four-light mullioned and transomed south window. Blocked moulded pointed-arched doorway, and rectangular doorway with boarded door to ends of east elevation. Chancel: C13, possibly with earlier core. Plain-chamfered stone plinth. Two-light C14 or C15 south-west window with 2 cinquefoil-headed lights and squared moulded hoodmould. Trefoil-headed south-east lancet. Three-light C19 east window. Two trefoil-headed sandstone north lancets. Tower: probably late C11 or C12, altered and partly rebuilt in C14 and C15. Broad battlements above moulded string. Two-light belfry windows with squared heads; two each to east and west, one to north and south. Broad rectangular hollow-chamfered single light below south belfry windows. Polygonal south-west stair turret. North aisle: rebuilt 1874-5, re-using four C15 windows. Hollow-chamfered plinth. Battlements above moulded string. Diagonal north-east buttress and 2 north buttresses. 5-light pointed-arched east window with 3 cinquefoil-

headed lights, tracery of vertical bars, and moulded hoodmould. Three similar north windows, alternating with buttresses. Small moulded 4-centred arched doorway with ribbed door, towards east end. North porch: C19 pointed-arched hollow-chamfered outer and inner doorways and pointed side-lights. Interior: Structure: 5-bay C19 nave arcade to north and south, with moulded pointed arches and octagonal columns with moulded capitals and bases. C14 doubly-hollow-chamfered pointed west tower arch set on C19 engaged columns with scalloped capitals. Similar east tower arch with roll-and-fillet hoodmould with carved heads to label stops, springing from engaged semi-octagonal columns with moulded capitals, and bases corbelled out from wall. Hollow-chamfered C14 pointed north tower arch springing from engaged columns with moulded capitals and bases, set in continuous doubly-hollow-chamfered outer order. Tall late C14 or early C15 two-light window with cinquefoil-headed lights to south side of base of tower. Small blocked east window and possibly blocked west window further up tower. North aisle windows with ashlar concave architraves and moulded pointed rere-arches springing from slender engaged shafts with moulded capitals and bases. Short narrow doorway with rounded head of one piece of stone to west end of south wall of tower. Blocked round-headed doorway with small even voussoirs beside it to east. Moulded pointed-arched doorway to east end of south aisle. Blocked rectangular rood-loft doorway to east wall of nave, south of tower arch. Base of stair turret, with hollow-chamfered plinth, visible from south transept. Roof: C19 hammerbeam roof with boarded rafters to nave. C19 chancel roof of collared common rafters with sous-laces, scissor-braces and ashlar-pieces. Flat roofs to aisles. Fixtures and fittings: small pointed-arched aumbry to south-east end of nave. Piscina with moulded ogee arch, to east end of south wall of chancel. Sedile adjacent to west of piscina, with 3 shallow stepped seats under broad pointed arch with engaged shafts with bell capitals and bases. Blocked hollow-chamfered 4-centred arched opening to north side of east wall of tower base. Monuments: cartouche on north wall of chancel, to Barnham Powell, d.1695; draped, with arms to top and bottom and cherub's head to base. Tablet on north wall of chancel to Richard Savage, d.1772; white marble, with moulded plinth over fluted base-plate, palm branches to side panels, and moulded cornice surmounted by 2 coats of arms and grey urn. Raised black marble inscription panel. Signed by R. Chambers. Small tablet to east end of north wall of north aisle; moulded plinth and cornice, lower frieze under plinth with 3 roses in relief, scrolled base-plate with moulded pendants and shield. Finely-carved

finials above cornice, and coat of arms surmounted by small urn. Inscription obscured at time of re-survey. The whole covered with intricate damask patterning. Tablet adjacent to the last to Wotton (?); moulded and consoled plinth, base-plate with text, unfluted Corinthian pilasters carrying moulded frieze with text, surmounted by finials and coats of arms. Inscription, obscured at time of re-survey, on 2 recessed black marble panels in moulded surround. 2 busts set high in south wall of north aisle, towards east end; part of monument to Sir Francis Barnham, d. 1634, by Nicholas Stone. Standing monument at west end of nave, to Sir Christopher Powell, d. 1742; white marble figures, in Roman dress, of Sir Christopher, reclining on black sarcophagus, flanked by mother and wife. Inscription on grey and white marble plinth beneath them. By Peter Scheemakers. (J. Newman, West Kent and the Weald, 1980)”

## Findings

8. My impressions of the church building and of the works very much mirror those of HE. The baby grand piano seems to be an instrument of reasonable quality in good working condition, which is sometimes used for worship and for concerts by visiting performers. The pews, though not unattractive, are not remarkable and I note that they do not figure in the listing description. I agree that the appearance of the floorboards at the east end of the nave would benefit from being stained so that they blend better with the Victorian tiled floor surrounding them. Subject to the colouration point in relation to the floorboards, I do not consider that any harm has been caused by these changes.
9. The carved timber nativity is a large and striking work by an artist with strong local associations, Graham Clarke. Mr Clarke also designed the very unusual Millennium Window, which celebrates “*the wonder of God’s creation and of His faithfulness*”.<sup>2</sup> A particular feature of the window is the depiction of a traditional nativity scene in the stable at Bethlehem “translated” to the Church gate. There is, therefore, a strong thematic link between the two pieces of work, especially as the carved figures are executed in a naïve or rustic aesthetic. The nativity is, however, a bulky object and I agree with HE as to the appropriateness of the proposal to move two short and insignificant pews from their position next to the north door to make way for it. The introduction of the nativity and proposed minor reordering to accommodate it are, in my view, beneficial.

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<sup>2</sup> Information leaflet on the Millennium Window.

10. Since the church is listed, I must consider the works and changes in the context of the guidelines enunciated in Duffield, St Alkmund [2013] Fam 158, as clarified in Re St John the Baptist Peshurst (2015) Court of Arches, as follows:

- "1. Would the proposals, if implemented, result in harm to the significance of the church as a building of special architectural or historic interest?
2. If the answer to question (1) is 'no', the ordinary presumption in faculty proceedings 'in favour of things as they stand' is applicable, and can be rebutted more or less readily, depending on the particular nature of the proposals (see **Peek v Trower** (1881) 7 PD 21, 26-8, and the review of the case-law by Chancellor Bursell QC in **In re St Mary's White Waltham (No2)** [2010] PTSR 1689 at para 11). Questions 3, 4 and 5 do not arise.
3. If the answer to question (1) is 'yes', how serious would the harm be?
4. How clear and convincing is the justification for carrying out the proposals?
5. Bearing in mind that there is a strong presumption against proposals which will adversely affect the special character of a listed building (see **St Luke, Maidstone** at p.8), will any resulting public benefit (including matters such as liturgical freedom, pastoral well-being, opportunities for mission, and putting the church to viable uses that are consistent with its role as a place of worship and mission) outweigh the harm? In answering question (5), the more serious the harm, the greater will be the level of benefit needed before the proposals should be permitted. This will particularly be the case if the harm is to a building which is listed Grade 1 or 2\*, where serious harm should only exceptionally be allowed."

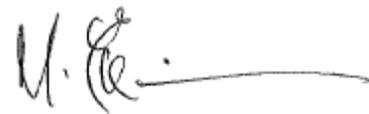
11. With the exception of the audio visual display units, I do not consider that any of the works and other changes undertaken or proposed are harmful to the heritage significance of the building. Indeed, like HE, I regard the nativity as a positive contribution to the cultural significance of the church.

12. My concerns about the audio visual units are that they are visually intrusive and that, as HE have pointed out, their thoroughly modern materials which are, to some extent reflective, are incongruous in the context of the historic stone of the church fabric. Having said that, save for the very limited fixing points, the introduction of the screens is reversible. I therefore consider that harm to

significance is slight and purely visual in nature. That harm could be reduced by mitigation measures as suggested by HE. The Petitioners explained to me that the display units are used in worship and assist in allowing innovation in terms of new hymns and so forth. The church is clearly a thriving and outward looking one, which is seeking to serve the community through accessible worship such as Messy Church. I consider, making allowance for conditions which can be placed on my permission, that public benefit outweighs harm and I note that HE appear to reach a similar conclusion.

### Conclusions

13. It is most regrettable that the works in question were undertaken without authorisation. One of the purposes of the Faculty jurisdiction is to enable churches to benefit from the expert advice of HE and other partner bodies. Perhaps as a consequence of lack of proper engagement earlier, the screens are more unfortunate in appearance than they need to be. I propose to grant the Faculty now sought, subject to a condition limiting its duration, in the case of the display screens, to 3 months. This will allow sufficient time for the petitioners to discuss mitigation with the DAC and bring forward suitable measures, along the lines suggested by HE.
14. Other conditions are to provide for staining proposals for the floorboards to be agreed with the DAC and executed so that the nativity is properly in position within 3 months. I am also imposing standard insurance and electrical wiring conditions.



MORAG ELLIS QC  
15 December 2016